



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/591,576

05/21/2007

Hanae Kaku

SHIMIZU-13111

3078

23535 7590 10/10/2008
MEDLEN & CARROLL, LLP
101 HOWARD STREET
SUITE 350
SAN FRANCISCO, CA 94105

EXAMINER

IBRAHIM, MEDINA AHMED

ART UNIT

PAPER NUMBER

1638

MAIL DATE

DELIVERY MODE

10/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-2, 4-10, and 14-16, drawn to a DNA encoding a protein having elicitor binding activity, a vector and a plant/seed comprising said DNA, and a plant transformation method.

Group II, claim(s) 3 , drawn to a protein encoded by the DNA of claim 1.

Group III, claim(s) 11-13, drawn to a pharmaceutical agent comprising the DNA of claim 1.

The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the DNA of claim 1 encoding a protein having chitin oligosaccharide elicitor binding activity, said protein comprises an amino acid substitution/deletion/addition of one or more amino acids in SEQ ID NO: 2 or 4 is known in the prior art as evidenced by Shibuya et al (MPMI (1998) 11:1167). Shibuya et al teach an isolated gene from rice encoding an elicitor binding protein. The DNA of claim 1 reads on the DNA of the prior art. Therefore, there is no special technical feature that links the invention of Group I to the invention of Group II or III.

In addition, the special technical feature of Group I that is not recited in Group II or III is considered to be DNA, vector, transgenic plant and a plant transformation method.

The special technical feature of Group II that is not recited in Group I or III is considered to be a protein.

The special technical feature of Group III that is not recited in Group I or II is considered to be a pharmaceutical agent.

Therefore, for all the reasons discussed above Inventions I-III lack unity.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (571)272-0797. The examiner can normally be reached on M-TH 8:00 am to 5:30 PM, and every other Friday from 8:00 AM to 5:00PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1638

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MAI
10/8/2008

/Medina A Ibrahim/
Primary Examiner, Art Unit 1638

Application Number 	Application/Control No.	Applicant(s)/Patent under Reexamination	
	10/591,576	KAKU ET AL.	
	Examiner	Art Unit	
	Medina A. Ibrahim	1638	